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13 Attorneys for Defendant
14 WAYCO GROUP, INC.

15 OAKLEY, INC.,

16 Plaintiff,

17 vs.
18 WEYCO GROUP, INC., a Wisconsin
19 Corporation, dba NUNN BUSH,

20 Defendant.

21 CASE NO. 08CV00480-L-RBB

22 **ANSWER TO COMPLAINT FILED
23 BY OAKLEY, INC.; REQUEST FOR
24 JURY TRIAL**

25 Defendant Weyco Group, Inc. ("Weyco") answers the complaint of Plaintiff
26 Oakley, Inc. ("Oakley") as follows:

27 JURISDICTION AND VENUE

28 1. Admit.

26 THE PARTIES

27 2. Admit.

3. Admit.

FACTUAL BACKGROUND

4. Weyco is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies.

5. Weyco admits that U.S. Reg. No. 2,293,046 for OAKLEY is a federally registered mark; Weyco is without knowledge or information sufficient to form a belief as to the truth of the allegation regarding Oakley's ownership of the mark and therefore denies.

6. Weyco admits that U.S. Reg. No. 2,293,046 for OAKLEY is a federally registered mark; Weyco is without knowledge or information sufficient to form a belief as to the truth of the allegation regarding Oakley's non-abandonment of the mark and therefore denies.

7. Deny.

8. Deny.

9. Weyco admits to having received written notice from Oakley as to Oakley's trademark registrations; Weyco denies any implication that it has infringed Oakley's trademark rights.

10. Weyco is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies.

11. Weyco is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies

12. Deny.

13. Deny.

14. Deny.

15. Deny.

FIRST CLAIM FOR RELIEF

16. Weyco's answers to the allegations of paragraphs 1-15 are repeated in response.

17. Admit.

18. Admit.

19. Weyco admits that U.S. Reg. No. 2,293,046 for OAKLEY is a federally registered mark; Weyco is without knowledge or information sufficient to form a belief as to the truth of the allegation regarding Oakley's ownership of the mark and therefore denies.

20. Weyco is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies.

21 Deny.

22 Deny

23 Deny

24 Deny

25 Derry

26 Derry

27. Deny.

28. Deny.

SECOND CLAIM FOR RELIEF

29. Weyco's answers to the allegations of paragraphs 1-28 are repeated in response.

30. Admit.

31. Admit.

32. Deny.

33. Deny.

34 Deny

AFFIRMATIVE DEFENSES

1. Defendant's use of the term "Oakley" was not trademark use and therefore cannot have infringed Plaintiff's trademark rights.

2. Defendant's use of the term "Oakley" ceased months prior to any notice or demand from Plaintiff.

3. Defendant's use of the term "Oakley" was as a style name subordinate to one or more famous trademarks of Defendant which appeared prominently on all packaging for the goods and the goods themselves. The term "Oakley" never appeared on any goods offered for sale or sold by Defendant.

4. Plaintiff has suffered no damage as a result of Defendant's use of the term "Oakley" because, among other things, Plaintiff does not sell goods which

1 compete with those which Defendant sold with style name "Oakley".

2 5. Defendant's use of the term "Oakley" was innocent.

3 6. Plaintiff's asserted trademark registration is invalid in that it was
4 procured through fraud on the United States Patent and Trademark Office.

5 WHEREFORE, Defendant Weyco Group, Inc. demands judgment as follows:

6 A. Dismissing this action with prejudice and on the merits;

7 B. Awarding defendant its costs, disbursements, and expenses incurred in
8 this action;

9 C. Awarding defendant such other and further relief as this Court deems
10 proper.

11 Dated: May 9, 2008

12 Respectively submitted,

13 **DOLL AMIR & ELEY, LLP**

14 **BOYLE FREDRICKSON, .S.C.**

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20 By:



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22 GREGORY L. DOLL

23 Attorneys for Defendant

1 **DEMAND FOR JURY TRIAL**
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4 Defendant hereby demands trial by jury.
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7 Dated: May 9, 2008
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9

10 Respectively submitted,
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12 **DOLL AMIR & ELEY, LLP**
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14 **BOYLE FREDRICKSON, .S.C.**
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16 By:

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20 GREGORY L. DOLL
21 Attorneys for Defendant
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